

CANADA

YAR No. 353654

PROVINCE OF NOVA SCOTIA

IN THE SUPREME COURT OF NOVA SCOTIA

TROUT POINT LODGE LIMITED, VAUGHN PERRET AND  
CHARLES LEARY  
PLAINTIFFS

- VERSUS -

DOUG K. HANDSHOE AND JANE DOE  
(ANNEMARIEBOUDREAUX@YAHOO.COM)

DEFENDANTS

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DECISION

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HEARD BEFORE: The Honourable Justice Suzanne  
Hood

COUNSEL: Dr. Charles Leary Self-Represented  
as Agent and Officer of Trout  
Point Lodge Limited

PLACE: Yarmouth JC1, Yarmouth, N.S.

DATE HEARD: February 1, 2012

INDEX  
TROUT POINT LODGE V. HANDSHOE  
FEBRUARY 1, 2012

Oral Decision ..... 3

EXHIBITS

<u>EXHIBIT</u>	<u>DESCRIPTION-----</u>	<u>PAGE</u>
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	None	
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1                                    FEBRUARY 1, 2012 AT 10:23 A.M.  
2

3                    THE COURT:        We    begin    by    saying    that

4            because   I   am   giving   this   decision   orally   I  
5            reserve   the   right,   should   it   be   required   to   be  
6            reduced   to   writing,   to   edit   but   not   of   course  
7            change   the   substance   of   it.

8                    Trout Point Lodge, Charles Leary and Vaughn  
9            Perret   have   obtained   default   judgment   against  
10           Doug Handshoe in an action filed in August 2011  
11           and amended in September 2011 for defamation,  
12           invasion   of   privacy,   injurious   falsehood,  
13           intentional   interference   with   contractual  
14           relations, intentional interference with economic  
15           relations, intentional infliction of emotional  
16           and   mental   distress   and   assault.        Default  
17           judgment   was   entered   on   December   12,   2011   with  
18           damages to be assessed.

19                    The plaintiffs move for an assessment of  
20            damages on January 12th, 2012.    Mr. Handshoe was  
21            given notice of a hearing for the assessment of  
22            damages.

1           The plaintiffs have provided a copy of a  
2           FedEx tracking slip showing delivery to Mr.  
3           Handshoe's home in Mississippi. It notes the  
4           materials were left at the house. Efforts were  
5           also made according to the testimony of Mr. Leary  
6           to fax the documents to Mr. Handshoe's fax number  
7           but the transmission was not complete as the fax  
8           appeared to have been disconnected. These  
9           materials appear also to have been sent by email  
10          and these documents are at Tab 3 to the materials  
11          presented in evidence by Mr. Leary at the  
12          hearing. It appears from Mr. Handshoe's blog  
13          that he had knowledge of the hearing since he  
14          referred to receiving, "nastygrams," from Mr.  
15          Leary and Mr. Perret in a blog dated January  
16          17th, 2012. Mr. Handshoe did not appear or  
17          participate in the assessment of damages.

18          Default judgment is conclusive of a claim  
19          set out in the statement of claim and that's in  
20          the authority for that, among others, **is E. Sands**  
21          **and Associates versus Dextras Engineering.** The

1       amended statement of claim sets out in detail the  
2       claims against Mr. Handshoe which are now to be  
3       treated by this court as proven. The statement  
4       of claim lists many examples of the defamatory  
5       comments made by Mr. Handshoe, below is a brief  
6       summary of them. The defamatory comments  
7       originated with a news story which was published  
8       in the Times-Picayune newspaper in Louisiana  
9       about Jefferson Parish President Aaron Broussard  
10      being involved in a political corruption scandal.  
11      The plaintiffs were erroneously identified as  
12      being connected with Mr. Broussard in a business  
13      venture and Mr. Broussard was named in error as  
14      owning Trout Point Lodge. The allegations  
15      against him are kickback schemes, money  
16      laundering and fraud while in his office as  
17      Parish President.

18           The defamatory comments later included  
19      claims that Trout Point Lodge, Mr. Leary and Mr.  
20      Perret had misled ACOA and that Mr. Leary  
21      committed perjury in litigation with ACOA. The

1       defamation continued with statements that Trout  
2       Point Lodge was losing business or going bankrupt  
3       because of the investigation of Mr. Broussard and  
4       his inability to continue to support it. Also  
5       there were claims that Charles Leary and Vaughn  
6       Perret had been involved in a series of  
7       businesses which failed and are con men. The  
8       statements also contained anti-gay rhetoric and  
9       homophobic comments.

10       After the original story was retracted by  
11       the Louisiana newspaper that published it Mr.  
12       Handshoe made statements that Mr. Leary and Mr.  
13       Perret had improperly influenced it to retract  
14       the story. He also said that Mr. Leary and Mr.  
15       Perret were improperly using the legal system by  
16       commencing the defamation action. Individual  
17       plaintiffs have filed affidavits and in his  
18       affidavit Mr. Leary has related incidents  
19       affecting him and Trout Point Lodge. He said in  
20       that affidavit in Paragraph 26,

21               "Due to the publications on  
22

1 Slabbed and by Mr. Handshoe  
2 elsewhere on the internet I  
3 have a very real fear that  
4 anyone performing due  
5 diligence on us as business  
6 people or innkeepers will  
7 discover and believe  
8 Handshoe's publications."  
9

10 He also said in Paragraph 27,

11  
12 "I felt embarrassed in my  
13 local community. Mr. Perret  
14 and I have at times, changes  
15 our usual shopping patterns in  
16 Yarmouth in order to avoid  
17 persons we consider friends  
18 who may have read the Slabbed  
19 publications."  
20

21 He also testified about the stress of the  
22 defamation on him in Paragraph 30 of the  
23 affidavit where he said,

24  
25 "In April 2011 at the time when  
26 Handshoe's publication about us  
27 became threatening and homophobic I  
28 experienced tightened shoulder and  
29 neck muscles, sleeplessness and  
30 developed a severe outbreak of fever  
31 blisters for which I had to take  
32 Zovirax, and antiviral medication.  
33 Previously I always slept very well  
34 never waking up early. Since April  
35 2011 I have experienced regular  
36 sleeplessness particularly waking up

1                   early in the morning worrying about  
2                   Slabbed and its effect on our  
3                   business."  
4

5           His affidavit concluded with Paragraph 39 where  
6           Mr. Leary says,

7                   "I'm seriously concerned about  
8                   Slabbed hurting the Lodge's business  
9                   which Mr. Perret and I rely on as  
10                  our primary source of income. In  
11                  2011 occupancy rates at Trout Point  
12                  were three percent lower than in  
13                  2010. This represents a value of at  
14                  least \$15,000."  
15  
16

17          Mr. Leary testified in court as well and his  
18          evidence was about since the Notice of Action was  
19          served and about the effect of the words of the  
20          defendant on him and Trout Point Lodge. Mr.  
21          Perret also filed an affidavit in which he stated  
22          the effects of the defamation on him. He said in  
23          his affidavit in Paragraphs 9 and 10,

24                   "Mr. Handshoe's internet  
25                   publications have added a great deal  
26                   of stress to our lives including the  
27                   physical manifestations. I felt  
28                   genuinely afraid of his published  
29                   threats and of the existence of the  
30                   Slabbed Nation and members of that  
31



1 group being in Nova Scotia. I now  
2 keep my doors locked at night  
3 whereas previously I never feared  
4 for my safety in my own home."  
5

6 He says in his affidavit at Paragraph 11,

7  
8 "I have told my personal physicians  
9 in Spain and Nova Scotia about  
10 stress and sleeplessness related to  
11 the Handshoe publications. My  
12 physician Dr. Fernandez Negrara had  
13 prescribed medication to help me  
14 sleep after the Slabbed publications  
15 commenced and to help control my  
16 anxiety. I have also experienced  
17 embarrassment, humiliation and  
18 irritability. It was hard to get  
19 through work in 2011 knowing that  
20 nearly every day a new source of  
21 embarrassment and business  
22 disruption might be published by  
23 Handshoe. I've been embarrassed  
24 that friends and acquaintances in  
25 Yarmouth might confront me about the  
26 Slabbed allegations. I could never  
27 be sure that members of the local  
28 community might secretly harbour a  
29 belief in the truth of the blogs  
30 allegations."  
31

32 In Paragraph 13 he says,

33  
34 "Mr. Handshoe has also made  
35 publications about my mother stating  
36 that I "split" and left her with a  
37 surrogate son in Louisiana. I was  
38 traumatized by his suggestions that

1 I had somewhat neglected or abused  
2 my mother."  
3

4 Mr. Perret also testified briefly, he said he had  
5 lost his appetite in the last two weeks as a  
6 result of the material which has been published  
7 by Mr. Handshoe and the volume of it. In  
8 addition, materials were submitted to the court  
9 which were testified to by Charles Leary. These  
10 included defamatory comments made after the  
11 Louisiana newspaper printed a retraction of the  
12 story. They include references to a cover-up of  
13 a crime and dirty secrets April 20th, 2011 that  
14 Charles Leary and Vaughn Perret and others were  
15 "bag holders" for Aaron Broussard and the  
16 purported owners of Trout Point Lodge. That same  
17 blog referred to the fleecing of investors in  
18 Trout Point Lodge by Mr. Broussard and his close  
19 connection to Mr. Leary and Mr. Perret. It also  
20 refers to Charles Leary as a liar and a perjurer  
21 in the litigation with ACOA. And that blog was  
22 April 26, 2011.

1           On August 15th, 2011 the blog refers to "a  
2       Trout Point Lodge Jefferson Parish political  
3       corruption scandal update" linking Trout Point  
4       Lodge with the corruption scandal involving Aaron  
5       Broussard. In that same blog he refers to Charles  
6       Leary and Vaughn Perret in the context of "by  
7       reporter, get a good story."

8           On August 16th his blog said that he was  
9       meticulously laying down "the trail of scams and  
10      political corruption that leads to Nova Scotia  
11      and Trout Point Lodge."

12          After being served with a Notice of Action  
13      further defamatory comments were made. On August  
14      18th he wrote,

15                               "First class bitches, common thugs  
16                               or just plain old morons."  
17  
18

19      He also refers to the "elite fraternity of crooks  
20      and miscreants" who have sued him. On August  
21      24th, 2011 he referred to "political wrongdoing  
22      involving Leary and Perret in Canada and it had  
23      nothing to do with Broussard *per se*."

1           He continues to make accusations of fraud  
2           against them and in bilking local contractors.  
3           He refers to "the chances Trout Point Lodge will  
4           be bankrupt within a year" and he said that on  
5           August 30th, 2011. In the same blog he refers to  
6           the "nefarious practices" of Charles Leary and  
7           Vaughn Perret. He refers to them being involved  
8           in money laundering. He calls them "grifters"  
9           and "grafters." He accuses them of fabricating  
10          positive reviews of Trout Point Lodge.  
11         Ultimately he links them with organized crime.

12           These types of comments continued throughout  
13          2011 and further defamatory comments were made  
14          earlier this month, January 2012, when the Notice  
15          of Assessment of Damages was served on him. I  
16          mentioned a few additional postings as follows.  
17          There's a posting from September 14th, 2011,

18                         "I'll add here, in case it is not  
19                         self-evident that I bill complete  
20                         dossiers on all the players in this  
21                         social group and I intend through  
22                         time to roll out each and every one  
23                         in excruciating detail as long as  
24                         the lawsuit in Canada is an  
25

1 outstanding issue for Slabbed. The  
2 reason for this is that this band of  
3 gay men act as a unit that will also  
4 scatter like cockroaches when the  
5 heat is applied."  
6

7 In January of 2012 the blog says,

8  
9 "Some of those names of the property  
10 owners at Trout Point have well  
11 documented connections to organized  
12 crime here in the U.S. From my  
13 standpoint flushing all this out  
14 only gets better from here."  
15

16 Another blog from September 14th, 2011, sorry,  
17 no, that's the same one. A blog from January  
18 29th of 2012,

19  
20 "When I'm done even Perret's niece  
21 who filed an affidavit in that **Fox 8**  
22 case will understand her uncle is a  
23 grifting scumbag pussy."  
24

25 And on January 26, 2012 the blog says, "He,"  
26 meaning Daquila (sp), "also has enough stroke to  
27 tell Charles and Vaughn what to do at Broussard's  
28 request."

29 There are many, many more blogs which  
30 contained defamatory materials such as this which

1 are included in the materials filed with the  
2 Court on January 30th.

3 Turning to the hearing, a comprehensive  
4 brief was filed with the Court with many case  
5 authorities. Mr. Leary made an oral submissions  
6 to the Court outlining the principles the Court  
7 should consider in deciding the quantum of  
8 damages for defamation, aggravated damages and  
9 punitive damages. In addition he referred to a  
10 recent Ontario Court of Appeal decision with  
11 respect to invasion of privacy which is also  
12 claimed by the individual plaintiffs.

13 In questioning by the Court, Mr. Leary said  
14 that the plaintiffs' other claims are subsumed in  
15 the Claim of Defamation, that is the claims were  
16 intentional interference with economic relations  
17 for intentional interference with contractual  
18 relations and injurious falsehood.

19 Mr. Leary submits that the invasion of  
20 privacy, assault and intentional infliction of  
21 emotional and mental distress stand alone and

1 individual plaintiffs seek damages for these  
2 separate from the defamation in related claims.

3 The plaintiffs seek damages of \$250,000 for  
4 each of the three plaintiffs. Aggravated damages  
5 for each individual plaintiff as well as punitive  
6 damages. They say that their original demand of  
7 aggravated damages of \$300,000 each should be  
8 increased because the amount was requested before  
9 the recent defamatory remarks which have  
10 continued since default judgment was entered and  
11 in particular since Mr. Handshoe was given notice  
12 of the assessment of damages. He said they would  
13 seek special damages for loss of business but it  
14 is too difficult to prove although he believes  
15 they have lost business because of the  
16 defamation.

17 In addition, the individual plaintiffs, as  
18 I've said, seek damages for invasion of privacy.  
19 In the **Jones** Decision the Ontario Court of Appeal  
20 said that the range for such damages is up to  
21 \$20,000. In that case the Court of Appeal

1       awarded damages in the amount of \$10,000. The  
2       plaintiffs here say that the extent of the  
3       invasion of privacy in that case was less than is  
4       the case here.       plaintiffs also seek an  
5       injunction preventing further defamatory comments  
6       and a mandatory injunction seeking to have the  
7       existing comments removed.

8       The leading case on defamation in Canada is  
9       the Supreme Court of Canada Decision is **Hill v.**  
10      **Church of Scientology of Toronto.** In that case  
11      Justice Cory writing for the majority referred to  
12      the fact that the defamatory comments were  
13      published on the local television news, reported  
14      in the Globe and Mail and reported on by CBC. He  
15      referred to the audience numbers of those media  
16      outlets and said that the audience for the local  
17      T.V. station was approximately 132,000. The  
18      Globe circulation that day was 108,000 and the  
19      CBC broadcast was seen by approximately 118,000.  
20      He refers to that in Paragraph 26 of the  
21      decision.



1 He said in Paragraph 108, and I quote,

2  
3 "False allegations can so very  
4 quickly and completely destroy a  
5 good reputation. A reputation  
6 tarnished by libel can seldom regain  
7 its former lustre."  
8

9 And he said with respect to defamatory statements  
10 in Paragraph 166,

11  
12 "A defamatory statement can seep  
13 into the crevices of the  
14 subconscious and lurk there, ever  
15 ready to spring forth and spread its  
16 cancerous evil. The unfortunate  
17 impression left by a libel may last  
18 a lifetime. Seldom does a defamed  
19 person have the opportunity of  
20 replying and correcting the record  
21 in a manner that will truly remedy  
22 the situation."  
23

24 Justice Cory later said in Paragraph 178 with  
25 respect to Mr. Hill,

26  
27 "He would never know who, as a  
28 result of the libellous statement,  
29 had some lingering suspicion that he  
30 was guilty of misconduct which was  
31 criminal in nature. He would never  
32 know who might have believed that he  
33 was a person without integrity who  
34 would act criminally in the  
35 performance of his duties as a Crown

1           counsel. He would never be certain  
2           who would accept the allegation that  
3           he was guilty of a criminal breach  
4           of trust which was the essential  
5           thrust of the libel."  
6

7           In considering whether the jury award of damages  
8           was appropriate, the Court quote from **Gatley** on  
9           libel and slander in Paragraph 182. In that text  
10          the author states,

11                   "The amount of damages is peculiarly  
12                   the province of the jury who in  
13                   assessing them will naturally be  
14                   governed by all the circumstances of  
15                   the particular case. They're  
16                   entitled to take into their  
17                   consideration the conduct of the  
18                   plaintiff, his position in standing,  
19                   the nature of the libel, the mode  
20                   and extent of publication, the  
21                   absence or refusal of any retraction  
22                   or apology and 'the whole conduct of  
23                   the defendant from the time the  
24                   libel was published down to the very  
25                   moment of their verdict. They may  
26                   take into consideration the conduct  
27                   of the defendant before action,  
28                   after action and in court on the  
29                   trial of the action.' And also it  
30                   is submitted that the conduct of his  
31                   counsel who cannot shelter his  
32                   client by taking responsibility for  
33                   the conduct of the case. They  
34                   should also allow 'for the sad truth  
35                   that no apology, retraction or  
36                   withdrawal can ever be guaranteed  
37

1 completely to undo the harm it has  
2 done or the hurt it has caused.'  
3 They should also take into account  
4 the evidence led in aggravation or  
5 litigation of the damages."  
6

7 The Court then said in Paragraph 184,

8  
9 "In considering and applying the  
10 factors pertaining to general  
11 damages in this case it will be  
12 remembered that the reports in the  
13 press were widely circulated and the  
14 television broadcast had a wide  
15 coverage. The setting and the  
16 persons involved gave the coverage  
17 an air of credibility and  
18 significance that must have  
19 influenced all who saw and read the  
20 accounts. The insidious harm of the  
21 orchestrated libel was indeed spread  
22 widely throughout the community."  
23

24 In considering the issue of aggravated damages  
25 Justice Cory again quoted from **Gatley** in  
26 Paragraph 183.

27  
28 "The conduct of the defendant, his  
29 conduct of the case and his state of  
30 mind are thus all matters which the  
31 plaintiff may rely on his  
32 aggravating the damages."  
33

34 "Moreover it is very well  
35 established that in cases where the

1 damages are at large the jury or the  
2 judge, if the award is left to him,  
3 can take into account the motives  
4 and conduct of the defendant where  
5 they aggravate the injury done to  
6 the plaintiff. There may  
7 malevolence or spite or the manner  
8 of committing the wrong may be such  
9 as to injure the plaintiffs' proper  
10 feelings of dignity and pride.  
11 These are matters which the jury can  
12 take into account in assessing the  
13 appropriate compensation."  
14

15 "In awarding aggravated damages the  
16 natural indignation of the Court at  
17 the injury inflicted on the  
18 plaintiff is a perfectly legitimate  
19 motive in making it generous rather  
20 than a more moderate award to  
21 provide an adequate solution. That  
22 is because the injury to the  
23 plaintiff is actually greater and as  
24 a result of the conduct, exciting  
25 the indignation, demands a more  
26 generous solatium."  
27

28 The Court then referred to the aggravating  
29 circumstances in that case at Paragraph 185.

30  
31 "The misconduct of the Appellants  
32 continued after the first  
33 publication. Prior to the  
34 commencement of the hearing of the  
35 contempt motion before Justice  
36 Cromarty, Scientology was aware that  
37 the allegations it was making  
38 against Casey Hill were false. Yet

1           it persisted with the contempt  
2           hearings as did Morris Manning. At  
3           the conclusion of the contempt  
4           hearing both appellants were aware  
5           of the falsity of the allegations.  
6           Nevertheless when the libel action  
7           was instituted the defensive  
8           justification was put forward by  
9           both of them. The statement of  
10          defense alleging justification or  
11          truth of the allegation was open for  
12          all the public to see. Despite  
13          their knowledge of its falsity the  
14          appellants continued to publish the  
15          libel."  
16

17                 Finally the manner in which Hill was crossed  
18          examined by the Appellant coupled with the manner  
19          in which they presented their position to the  
20          jury in light of their knowledge of the falsity  
21          of their allegations are further aggravating  
22          factors to be taken into account.

23                 Justice Cory dealt with the issue of  
24          aggravated damages in Paragraphs 188 and 189.

25                 "Aggravated damages may be awarded  
26          in circumstances where the  
27          defendant's conduct has been  
28          particularly high handed or  
29          oppressive thereby increasing the  
30          plaintiffs' humiliation and anxiety  
31          arising from the libellous  
32          statement."  
33

1  
2           The nature of these damages was aptly  
3 described by Justice Robins in **Walker v. CFTO**  
4 **Limited** in these words,

5  
6           "Where the defendant is guilty of  
7 insulting, high handed, spiteful,  
8 malicious or oppressive conduct  
9 which increase the mental distress  
10 the humiliation and indignation,  
11 anxiety, grief, fear and the like,  
12 suffered by the plaintiff as a  
13 result of being defamed, the  
14 plaintiff may be entitled to what  
15 has come to be known as aggravated  
16 damages. These damages take into  
17 account the additional harm caused  
18 to the plaintiffs' feeling by the  
19 defendant's outrageous and malicious  
20 conduct. Like general or special  
21 damages they are compensatory in  
22 nature. Their assessment requires  
23 consideration by the jury of the  
24 entire conduct of the defendant part  
25 of the publication of the libel and  
26 continuing through to the conclusion  
27 of the trial. They represent the  
28 expression of natural indignation of  
29 right-thinking people arising from  
30 the malicious conduct of the  
31 defendant."  
32

33           In Paragraph 191 Justice Cory considered the  
34 factors in that case that warranted an award of  
35 aggravated damages. There are a number of

1 factors that a jury may properly take into  
2 account in assessing aggravated damages. For  
3 example, was there a withdrawal of the libellous  
4 statement made by the defendants and an apology  
5 tendered. If there was this may go far to  
6 establishing that there was no malicious conduct  
7 on the part of the defendant warranting an award  
8 of aggravated damages. The jury may also  
9 consider whether there was a repetition of the  
10 libel, conduct that was calculated to deter the  
11 plaintiff from proceeding with the libel action,  
12 a prolonged and hostile examination of the  
13 plaintiff or plea of justification which the  
14 defendant knew was bound to fail. The general  
15 manner in which the defendant presented its case  
16 is also relevant. Further it is appropriate for  
17 a jury to consider the conduct of the defendant  
18 at the time of the publication of the libel. For  
19 example was it clearly aimed at obtaining the  
20 widest possible publicity in circumstances that  
21 were the most adverse possible to the plaintiff.

1           The Supreme Court of Canada also considered  
2           the issue of punitive damages beginning at  
3           Paragraph 196 where the Court said,

4                       "Punitive damages may be awarded in  
5                       the situation where the defendant's  
6                       conduct is so malicious, oppressive  
7                       and high handed that it offends..."  
8  
9

10          - missing a page. Can we just, we'll just go  
11          off the record for a moment, I have to find the  
12          rest of that quote.

13  
14                       [RECESS 10:47 - 10:48 A.M.]  
15

16               THE COURT:       The Supreme Court of Canada  
17          dealt with the issue of punitive damages  
18          beginning at Paragraph 196, where the Court said,  
19

20                       "Punitive damages may be awarded in  
21                       situations where the defendant's  
22                       misconduct is so malicious,  
23                       oppressive and high handed that it  
24                       offends the Court's sense of  
25                       decency."  
26

27          Punitive damages bear no relation to what  
28          the plaintiff should receive by way of



1 compensation. Their aim is not to compensate the  
2 plaintiff but rather to punish the defendant. It  
3 is the means by which the jury or Judge expresses  
4 its outrage at the egregious conduct of the  
5 defendant. They are in the nature of a fine  
6 which is meant to act as a deterrent to the  
7 defendant and to others from acting in this  
8 manner. It is important to emphasize that  
9 punitive damages should only be awarded in those  
10 circumstances where the combined award of general  
11 and aggravated damages would be insufficient to  
12 achieve the goal of punishment and deterrents.

13 One of the important factors for the Court  
14 was set out in Paragraph 202,

15

16 "During the appeal it was conceded  
17 and the evidence and events  
18 confirmed that in all likelihood no  
19 amount of general or aggravated  
20 damages would have deterred  
21 Scientology. Clearly then this was  
22 an appropriate case for an award of  
23 punitive damages."  
24

25 It is important that each case of

1       defamation must be looked at on its own facts and  
2       the awards given in other decisions are therefore  
3       not of much assistance.

4       The Supreme Court of Canada acknowledged  
5       this in the Hill Decision in Paragraph 187.  
6       **Barrick Gold** is a decision of the Ontario Court  
7       of Appeal dealing with defamation in the internet  
8       context. Justice Blair said in Paragraph 28  
9       about internet defamation,

10                        "Is there something about defamation  
11                        on the internet, cyber libel as it's  
12                        sometimes called, that distinguishes  
13                        it for purposes of damages from  
14                        defamation in another medium? My  
15                        response to that question is yes."  
16  
17

18       He referred to the principles set out in **Hill** and  
19       then in Paragraph 30 quoted from an Australian  
20       decision the quote, "Ambiguity, universality and  
21       utility," of the internet. He continued in  
22       Paragraph 31,

23                        "Thus of the criteria mentioned  
24                        above, the mode and extent of  
25                        publication is particularly relevant  
26                        in the internet context, and must be  
27

1 considered carefully. Communication  
2 via the internet is instantaneous,  
3 seamless, interactive, blunt,  
4 borderless and far reaching. It is  
5 also impersonal and the anonymous  
6 nature of such communication has  
7 made itself create a greater risk  
8 that the defamatory remarks are  
9 believed."  
10

11 He then said in Paragraph 34,

12  
13 "Internet defamation is  
14 distinguished from its less  
15 pervasive cousins in terms of its  
16 potential to damage the reputation  
17 of individuals in corporations by  
18 the features described above  
19 especially its interactive nature,  
20 its potential for being taken at  
21 face value and its absolute and  
22 immediate worldwide ubiquity and  
23 accessibility. The mode and extent  
24 of publication is therefore  
25 particularly significant  
26 consideration in assessing damages  
27 in internet defamation cases."  
28

29 In **Barrick Gold** an injunction was issued.

30 Justice Blair said in Paragraph 75,

31  
32 "A highly transmissible nature of  
33 the tortious misconduct at issue  
34 here is a factor to be addressed in  
35 considering whether a permanent  
36 injunction should be granted. The  
37 courts are faced with a dilemma. On

1 the one hand they can throw up their  
2 collective hands in despair taking  
3 the view that enforcement against  
4 such (inaudible due to mumbling...)   
5 transmissions around the world is  
6 ineffective and concluding therefore  
7 that only the jurisdiction where the  
8 originator of the communication may  
9 happen to be found can enjoin the  
10 offending conduct. On the other  
11 hand they can at least protect  
12 against the impugned conduct in  
13 their own jurisdiction."  
14

15 In this respect I agree with the following  
16 observation of Justice Kirby in **Dow Jones**,

17  
18 "Any suggestion that there can be no  
19 effective remedy for the tort of  
20 defamation or other civil wrongs  
21 committed by the use of the internet  
22 or such wrongs must simply be  
23 tolerated as the price to be paid  
24 for the advantages of the medium is  
25 self-evidently unacceptable."  
26

27 A permanent injunction was granted and the Court  
28 said in Paragraph 78,

29 "I would set aside the decision of  
30 the motions judge in this regard and  
31 grant a permanent injunction as  
32 requested restraining the defendants  
33 from disseminating, posting on the  
34 internet or publishing further  
35 defamatory statements concerning  
36 Barrick or its officers, directors

1 or employees."

2

3 ' In **Astley v. Verdun** The Ontario Supreme  
4 Court of Justice, Superior Court of Justice cited  
5 **Barrick Gold** and ordered an injunction and a  
6 mandatory injunction against the defendant. In  
7 that case the defendant stated that in spite of  
8 jury verdict against him he would continue to  
9 "disparage and discredit the reputation of the  
10 plaintiff," quoting from Paragraph 16.

11 Justice Chapnik in that case said in  
12 Paragraph 33,

13 "Injunctive relief is an exceptional  
14 remedy that will not be imposed by  
15 the Courts lightly. I certainly  
16 agree with the defendant when he  
17 states that any form of prior  
18 restraint on freedom of speech is  
19 extremely serious and can only be  
20 imposed in the clearest and rarest  
21 of cases. This however is one of  
22 those cases."  
23  
24

25 He then outlined in Paragraph 34 the  
26 circumstances of the case which caused him to  
27 grant an injunction. He said,

1  
2 "This is so given the plaintiffs'  
3 high reputation and position in the  
4 business community and the wide  
5 circulation of the defamatory  
6 statements calculated to destroy  
7 that reputation as well as the  
8 strong likelihood that the  
9 publishing of defamatory statements  
10 against the plaintiff will continue  
11 and the real possibility that the  
12 plaintiff will not actually be  
13 compensated by the payment of  
14 damages."  
15

16 A prudent injunction was granted and the Court  
17 said in Paragraph 35,

18  
19 "Accordingly I order a permanent  
20 injunction to issue against the  
21 defendant, J. Robert Verdun  
22 restraining him from disseminating,  
23 posting on the internet or  
24 publishing in any manner whatsoever,  
25 directly or indirectly, any  
26 statements or comments about the  
27 plaintiff Robert M. Astley."  
28

29 He also granted a mandatory injunction. He said  
30 in Paragraph 36,

31  
32 "There will also be a mandatory  
33 injunction requiring the defendant  
34 to forthwith remove his blog  
35 postings dated April 29, 2011 and

1 May 2nd, 2011 from the internet and  
2 any similar postings that refer to  
3 the plaintiff directly or  
4 indirectly."  
5

6 In **Mina Mar Group v. Divine Justice Perell**  
7 also quoted **Barrick Gold**. He granted an  
8 injunction issuing out of an Ontario Court  
9 against the defendant in New Jersey. He simply  
10 said in Paragraph 28,

11  
12 "In accordance with the above  
13 authorities, I also grant a  
14 permanent injunction restraining the  
15 defendants from disseminating,  
16 posting on the internet or  
17 publishing further defamatory  
18 statements concerning the  
19 plaintiffs."  
20

21 On the issue of invasion of privacy Mr.  
22 Leary provided to the Court the recent decision  
23 dated January 18th of 2012 of the Ontario Court  
24 of Appeal in **Jones v. Tsige** in which the Court  
25 concluded there is, at least in Ontario, a tort  
26 of invasion, intrusion into seclusion otherwise  
27 called invasion of privacy which is claimed by  
28 the individual plaintiffs in this matter. The

1 facts in that case are very different from those  
2 in this case. The defendant had accused, had  
3 accessed the plaintiff's personal banking  
4 information on 174 occasions over a period of  
5 four years. However she did not publish or  
6 distribute it but used it for her own purposes in  
7 a dispute with the plaintiff's partner, the  
8 former husband of the defendant. She apologized  
9 for her actions and the Court concluded she was  
10 embarrassed and contrite. The plaintiff claimed  
11 \$70,000 in damages for invasion of privacy and  
12 exemplary damages of \$20,000. The Court said the  
13 range of damages for this claim is up to \$20,000  
14 and awarded \$10,000.

15 I am satisfied that in an appropriate case  
16 in Nova Scotia there can be an award for invasion  
17 of privacy or as the Ontario Court of Appeal  
18 called it, the intrusion upon seclusion. I must  
19 determine if in this case it is warranted  
20 considering the principles set out in **Jones**. In  
21 **Jones** there was no accompanying claim for



1       defamation as there was no publication of  
2       defamatory statements about the plaintiff.

3             In **Nitsopoulos v. Wong** the action was for  
4       deceit and invasion of privacy. The action  
5       concerned gaining entry to the plaintiff's home  
6       and publishing information gained while there.  
7       The action was brought outside the limits, the  
8       time limits for a defamation action.

9             The facts in this case are that Mr.  
10      Handshoe, on his blog, disclosed Mr. Leary's  
11      business and home address and his location when  
12      he was visiting Spain. With respect to Mr.  
13      Perret, he said that he had abandoned his mother  
14      when he left Louisiana for Canada and Mr. Perret  
15      said he was traumatized by this statement.

16            Mr. Handshoe made extremely derogatory and  
17      homophobic comments of the most outrageous kind  
18      about Mr. Leary and Mr. Perret and their sexual  
19      orientation including and posting as what I will  
20      refer to as doctored photographs of a sexual  
21      nature depicting them.

1           Invasion of privacy in the **Jones** case was  
2           private and personal banking information having  
3           been looked at many, many times. That sort of  
4           financial and banking information is not usually  
5           disclosed by people even to their closest friends  
6           yet another bank employee who was not known to  
7           the plaintiff looked at her private bank  
8           information on numerous occasions.

9           In **Nitsopoulos** the defendant posed as a maid  
10          for a Toronto cleaning service so she could write  
11          a series of articles for the Globe and Mail  
12          entitled "Maid for a Month." She gained access  
13          to the plaintiff's home and her experiences are  
14          profiled in the second of these articles. The  
15          article published private details about the life  
16          of the plaintiffs that she gained while in their  
17          home. The plaintiffs alleged that they would not  
18          have permitted the reporter into their home had  
19          she not fraudulently misrepresented herself to  
20          them. They claimed that they suffered harm to  
21          their dignity, interests and personal autonomy,

1       their personal and home security and their mental  
2       wellbeing. The Court refused to grant summary  
3       judgment to the defendants which they had sought  
4       on the basis that there was no cause of action  
5       for invasion of privacy.

6               In the **Jones** case the Ontario Court of  
7       Appeal dealt with the issue of whether Ontario  
8       law recognized a cause of action for invasion of  
9       privacy. Justice Sharpe writing for the Court  
10      said in Paragraph 15,

11                       "Aspects of privacy have long been  
12                       protected by causes of action such  
13                       as breach of confidence, defamation,  
14                       breach of copyright, nuisance, and  
15                       various property rights. Although  
16                       the individual's privacy interest is  
17                       a fundamental value underlying such  
18                       claims, the recognition of a  
19                       distinct right of action for breach  
20                       of privacy remains uncertain."  
21  
22

23               Justice Sharpe referred to an article by  
24       William L. Prosser entitled *Privacy* which was  
25       published in the *California Law Review* 383. He  
26       said there were four torts which were quoted in  
27       Paragraph 18;

1  
2           1.           Intrusion upon the plaintiff's  
3           seclusion or solitude, or into his private  
4           affairs;

5           2.           Public disclosure of embarrassing  
6           private facts about the plaintiff;

7           3.           Publicity which places the plaintiff  
8           in a false light in the public eye;

9           4.           Appropriation, for the defendant's  
10          advantage, of the plaintiff's name or likeness.

11  
12          He said the most relevant of these is the  
13          intrusion upon seclusion and he quoted in  
14          Paragraph 19 its definition from *Restatement*,  
15          *second restatement of torts* as follows,

16  
17                 "One who intentionally intrudes,  
18                 physically or otherwise, upon the  
19                 seclusion of another or his private  
20                 affairs or concerns, is subject to  
21                 liability to the other for invasion  
22                 of his privacy, if the invasion  
23                 would be highly offensive to a  
24                 reasonable person."  
25

26          He continued in Paragraph 20,

1  
2           "The comment section of the  
3           Restatement elaborates this  
4           proposition and explains that the  
5           tort includes physical intrusions  
6           into private places as well as  
7           listening or looking, with or  
8           without mechanical aids, into the  
9           plaintiff's private affairs. Of  
10          particular relevance to this appeal,  
11          is the observation that other non-  
12          physical forms of investigation or  
13          examination into private concerns  
14          may be actionable. These include  
15          opening private and personal mail or  
16          examining a private bank account,  
17          even though there is no publication  
18          or other use of any kind of the  
19          information obtained."  
20

21           The decisions he then (inaudible due to  
22          mumbling...) dealt largely with the collection of  
23          personal data. Chartered jurisprudence dealing  
24          with privacy has focussed on search and seizure  
25          in the criminal law context.

26           Justice Sharpe said in Paragraph 41 that  
27          there are three distinct privacy interests, the  
28          third being a relevant one in **Jones**. That is the  
29          informational privacy. He quoted from the  
30          Decision of the **Queen v. Tessling** in Paragraph 41  
31          where the Supreme Court of Canada said,

1  
2 "Beyond our bodies and the places  
3 where we live and work, however,  
4 lies the thorny question of how much  
5 information about ourselves and  
6 activities we are entitled to shield  
7 from the curious eyes of the state.  
8 This includes commercial information  
9 locked in a safe kept in a  
10 restaurant owned by the accused.  
11 Informational privacy has been  
12 defined as 'the claim of  
13 individuals, groups, or institutions  
14 to determine for themselves when,  
15 how, and to what extent information  
16 about them is communicated to  
17 others.' Its protection is  
18 predicated on the assumption that  
19 all information about a person is,  
20 in a fundamental way, his own for  
21 him to communicate or retain as he  
22 sees fit."  
23

24 In Paragraph 44 he referred to the *Universal*  
25 *Declaration of Human Rights* which provides,

26  
27 "No one shall be subjected to  
28 arbitrary interference with his  
29 privacy, home or correspondence and  
30 proclaims that everyone has the  
31 right to the protection of the law  
32 against such interference or  
33 attacks."  
34

35 Justice Sharpe said in Paragraph 45,  
36

1           "While the *Charter* does not apply to  
2           common law disputes between private  
3           individuals, the Supreme Court has  
4           acted on several occasions to  
5           develop the common law in a manner  
6           consistent with *Charter* values."

7  
8  
9           Justice Sharpe then reviewed privacy legislation  
10          in Canada and the development of privacy law in  
11          other jurisdictions. He then said in Paragraph  
12          67,

13  
14                "For over one hundred years,  
15                technological change has motivated  
16                the legal protection of the  
17                individual's right to privacy. In  
18                modern times, the pace of  
19                technological change has accelerated  
20                exponentially. Legal scholars such  
21                as Peter Burns have written of 'the  
22                pressing need to preserve privacy  
23                which is being threatened by science  
24                and technology to the point of  
25                surrender.' The internet and digital  
26                technology have brought an enormous  
27                change in the way we communicate and  
28                in our capacity to capture, store  
29                and retrieve information. As the  
30                facts of this case indicate,  
31                routinely kept electronic data bases  
32                render our most personal financial  
33                information vulnerable. Sensitive  
34                information as to our health is  
35                similarly available, as are records  
36                of the books we have borrowed or  
37                bought, the movies we have rented or  
38                downloaded, where we have shopped,

1           where we have travelled, and the  
2           nature of our communications by cell  
3           phone, e-mail or text message".  
4

5           He then deals with law as it applied to the  
6           case before the Court. He said in Paragraph 71,  
7

8           "The key features of this cause of  
9           action are, first, that the  
10          defendant's conduct must be  
11          intentional, within which I would  
12          include reckless; second that the  
13          defendant must have invaded, without  
14          lawful justification, the  
15          plaintiff's private affairs or  
16          concerns; and third, that a  
17          reasonable person would regard the  
18          invasion as highly offensive causing  
19          distress, humiliation or anguish.  
20          However, proof of harm to a  
21          recognized economic interest is not  
22          an element of the cause of action. I  
23          return below to the question of  
24          damages, but state here that I  
25          believe it important to emphasize  
26          that given the intangible nature of  
27          the interest protected, damages for  
28          intrusion upon seclusion will  
29          ordinarily be measured by a modest  
30          conventional sum."  
31

32          He continued in Paragraph 72,

33  
34          "These elements make it clear that  
35          recognizing this cause of action  
36          will not open the floodgates. A



1 claim for intrusion upon seclusion  
2 will arise only for deliberate and  
3 significant invasions of personal  
4 privacy. Claims from individuals who  
5 are sensitive or unusually concerned  
6 about their privacy are excluded: it  
7 is only intrusions into matters such  
8 as one's financial or health  
9 records, sexual practices and  
10 orientation, employment, diary or  
11 private correspondence that, viewed  
12 objectively on the reasonable person  
13 standard, can be described as highly  
14 offensive."  
15

16 He then referred to the competing claims of  
17 freedom of expression and freedom of the press.  
18 He said in Paragraph 73,

19  
20 "Suffice it to say, no right to  
21 privacy can be absolute and many  
22 claims for the protection of privacy  
23 will have to be reconciled with, or  
24 even yield to, such competing  
25 claims."  
26

27 In Paragraph 87 Justice Sharpe set out the  
28 considerations in determining damages where an  
29 intrusion on seclusion has been found to exist.

30 In **Jones** there was no issue about freedom of  
31 expression or freedom of the press. The Ontario  
32 Court of Appeal therefore did not have to

1 consider the balance to be struck between those  
2 rights and privacy rights.

3 Justice Sharpe specifically mentioned  
4 intrusion into matters involving a person's  
5 sexual practices and orientation as being  
6 possible subjects for a claim of intrusion upon  
7 seclusion. However he said these intrusions must  
8 be viewed objectively and be viewed as highly  
9 offensive. Weight against this is freedom of  
10 persons to express their opinions.

11 Certainly the comments made by Mr. Handshoe  
12 deal with Mr. Leary's and Mr. Perret's sexual  
13 orientation. They're anti-gay and homophobic,  
14 they were very upsetting to both as were the  
15 doctored up photographs, they're highly  
16 offensive. However the issue of weighing the  
17 effect of the intrusion on seclusion against the  
18 issue of freedom of expression was not argued  
19 before me. In such circumstances I conclude this  
20 is not an appropriate case for the award of  
21 damages for intrusion of seclusion.

1           In this regard I note as well the comments  
2       of Justice Cory in **Hill** where he said with  
3       respect to defamation,

4                       "Reputation is intimately related to  
5                       the right to privacy which has been  
6                       accorded constitutional protection."  
7  
8

9           This passage was also quoted by Justice  
10       Sharpe in Paragraph 43 of the **Jones** decision.

11           Because this is also a defamation action I  
12       conclude this is a further reason to leave the  
13       issue of a cause of action for intrusion on  
14       seclusion for another day in another proceeding.

15           Now turning to the damage award with respect  
16       to Trout Point Lodge. With respect to the  
17       corporate plaintiff it is clear that a  
18       corporation can be defamed. Damages were awarded  
19       to the Barrick Gold Corporation and to Dover  
20       Investments Limited. In the latter decision the  
21       Court set out the principles in awarding damages  
22       to a corporate plaintiff.

23           The Court said in Paragraph 19,

1  
2 "Damages for a corporate plaintiff  
3 are to compensate for the harm to  
4 its goodwill and business  
5 reputation. The factors to be  
6 considered in assessing damages  
7 include the defendant's conduct, his  
8 position and standing, the nature of  
9 the defamation, the absence of an  
10 apology or refusal to apologize and  
11 his conduct throughout up to and  
12 including at trial. In addition to  
13 general damages for defamation a  
14 corporate plaintiff may be entitled  
15 to special damages for specific  
16 economic loss. In addition general  
17 damages for defamation in  
18 exceptional cases a corporate  
19 plaintiff may be entitled to an  
20 award of punitive damages for  
21 malicious, oppressive and high-  
22 handed conduct. Punitive damages  
23 are intended to punish a defendant  
24 rather than compensate a plaintiff.  
25 Compensatory damages of substantial  
26 may also be considered punishment  
27 and should be taken into account  
28 when determining whether an award of  
29 punitive damages is warranted."  
30

31 Trout Point Lodge has been stated to have been  
32 funded by money illegally obtained through Mr.  
33 Broussard and through the dishonest actions of  
34 Mr. Leary and Mr. Perret and getting money from  
35 ACOA and other investors. It has been said to be  
36 on the verge of bankruptcy. These are things

1           which would cause potential guests to decide not  
2           to come to Trout Point Lodge.

3           The defamation in my view has harmed the  
4           goodwill of the business and its business  
5           reputation. It casts an unfavorable light on the  
6           business which has otherwise received extremely  
7           positive reviews in the Globe and Mail, the  
8           National Post, US Today and the National  
9           Geographic Traveler to mention just a few.

10          It has also been commended by well-known  
11          publications such as Four Doors Guide to Atlantic  
12          Canada and Forbes Traveller to name a few.

13          It has also been recognized as a Top 10  
14          finalist in the National Geographic Society's  
15          2009 Geo-tourism challenge. Some of this  
16          information is included at Tab 5 of the evidence  
17          submitted at the hearing.

18                 Mr. Leary points out in Paragraph 8  
19                 of his affidavit, "In addition to  
20                 its membership and prestigious hotel  
21                 and restaurant association Relais  
22                 and Chateaux Trout Point has always  
23                 maintained a four and one half star  
24                 rating from Canada Select. It's the  
25                 only hotel in Atlantic Canada

1 inspected and recommended by Conde  
2 Nast Johansens Guide and earned a  
3 five green key rating from the hotel  
4 association of Canada."  
5

6 The defendant is persistent in his  
7 statements that Trout Point Lodge is somehow  
8 connected to the Jefferson Parish corruption  
9 scandal and has benefitted financially from funds  
10 illegally obtained. The defendant knows that the  
11 original story linking Mr. Broussard with Trout  
12 Point Lodge has been retracted and an apology  
13 published. In the face of this the defamatory  
14 comments continued.

15 Mr. Handshoe had refused to apologize or  
16 retract and in fact has republished the original  
17 statements and says they are true. In addition  
18 he has alleged that the business is on the verge  
19 of bankruptcy and has received funds improperly.

20 All this has been done through the internet  
21 which has the potential to reach untold numbers  
22 of potential guests of Trout Point Lodge  
23 throughout the world.

1           The defamation has gone on now for two years  
2           and there is no indication that the defendant  
3           intends to stop.       The defendant's conduct  
4           throughout has been to attempt to destroy the  
5           reputation of the business.

6           In my view it may be very difficult to  
7           change the perception of Trout Point Lodge caused  
8           by the defamation and its reputation as a world  
9           class resort has been damaged.

10          I conclude that the appropriate award of  
11          damages for the defamation of Trout Point Lodge  
12          is \$75,000.

13          The individual plaintiffs have been called  
14          dishonest, part of money laundering scheme  
15          involving Mr. Broussard and part of a political  
16          corruption scandal involving Mr. Broussard which  
17          is now the subject of FBI investigation.

18          They are said to have lied and misled ACOA  
19          and the Court in the ACOA action. Mr. Leary has  
20          said to have perjured himself in that litigation.  
21          They are said to have misused the justice system

1 in Nova Scotia for their own purposes. They are  
2 referred to as participating in nefarious schemes  
3 being bag holders for Mr. Broussard, being  
4 unsuccessful businessmen who have had a series of  
5 failed businesses and being conmen.

6 Mr. Leary has said they have changed their  
7 patterns of running errands to avoid running into  
8 people who may ask them about the internet  
9 information published about them. They are  
10 embarrassed and stressed by the defamation.

11 To paraphrase the Supreme Court of Canada  
12 decision in **Hill**,

13 "They will never know who, as a  
14 result of the defamation, still has  
15 a lingering suspicion that they are  
16 dishonest, schemers and con men and  
17 were involved with Aaron Broussard  
18 in the political corruption of which  
19 he is accused. They will never know  
20 who might believe that they are  
21 without integrity and were involved  
22 in criminal activity."  
23  
24

25 These unfounded statements about the  
26 character, business dealings and financial acumen  
27 of these businessmen merit an award of damages



1           for each in the amount of \$100,000.

2           Aggravated damages are beyond the damages  
3           already awarded which are given when the injury  
4           to a plaintiff are aggravated. As Gatley on  
5           libel and slander described it, they reflect a  
6           natural indignation of the Court of the injury  
7           inflicted. As Justice Cory said in **Hill** they  
8           take into account the additional harm caused to  
9           the plaintiff's feelings by the defendant's  
10          outrageous and malicious conduct.

11          Justice Cory in **Hill** considered the factors  
12          in that case which the Court believed made such  
13          an award by the jury in that case a reasonable  
14          one.

15          I conclude that the following factors in  
16          this case call for such an award here. The  
17          original story was retracted by the Times-  
18          Picayune in New Orleans, nevertheless Mr.  
19          Handshoe continued to spread the defamation. He  
20          then came up with additional statements  
21          concerning events in Nova Scotia which defamed

1 the defendants beyond the original defamation.  
2 He commented on other business ventures of the  
3 plaintiffs and other legal matters in which they  
4 were involved misrepresenting facts and attacking  
5 the reputations with statements that they were  
6 dishonest, fraudsters and liars. The widespread  
7 defamatory continued to the date of this hearing  
8 in a meeting well suited to spreading the  
9 defamation far and wide to a vast number of  
10 internet users.

11 Furthermore there was conduct by the  
12 defendant in trying to stop the plaintiffs from  
13 continuing their action against him. He  
14 threatened to release dossiers of information he  
15 had about the plaintiffs and other unnamed people  
16 unless the action was discontinued. All of this  
17 is outrageous conduct in the face of true facts  
18 about the plaintiffs.

19 Malice is an essential element of an award  
20 of aggravated damages and in this case malice is  
21 alleged in the statement of claim in Paragraph 93

1           and other places and is therefore deemed admitted  
2           by virtue of the default judgment.

3           I therefore award an additional \$50,000 to  
4           each of Mr. Leary and Mr. Perret in aggravated  
5           damages to express the indignation of the court.

6           As the Supreme Court of Canada said in **Hill**,  
7           punitive damages are not compensatory in nature  
8           but are meant to punish the defendant. There  
9           must be a rational purpose in awarding punitive  
10          damages. In **Hill** the Supreme Court of Canada  
11          considered the actions of the Church of  
12          Scientology and its officers during the course of  
13          the litigation and focussed on its oppressive and  
14          high handed conduct and the malice of which it  
15          acted throughout.

16          The defendant in this case continued his  
17          defamation after the newspaper printed a  
18          retraction of its story linking Trout Point  
19          Lodge, Mr. Leary and Mr. Perret with Aaron  
20          Broussard and the serious criminal allegations  
21          against him. He redoubled his efforts after

1       being sued and continued his defamation after  
2       judgment had been entered against him.     He  
3       repeated the original defamatory statements.

4             Just prior to the hearing about damages  
5       there were further defamatory statements.

6             Mr. Handshoe has stated that because of  
7       legislation in the United States it would be  
8       impossible for the plaintiffs to recover judgment  
9       against him.     This is a factor in awarding  
10      punitive damages.

11            I conclude there is a rational reason for  
12      awarding punitive damages in this case for the  
13      defendant's egregious misconduct which offends  
14      the court's sense of decency.   It is to act as a  
15      deterrent not only to Mr. Handshoe but also to  
16      others who might be inclined to defame someone in  
17      this fashion.

18            With respect to Trout Point Lodge I conclude  
19      that the defamation award itself is an  
20      appropriate award to punish the defendant for his  
21      defamation of the corporate plaintiff.     With

1           respect to Mr. Leary and Mr. Perret I conclude  
2           that there is a need for additional punishment of  
3           the defendant because the defamation of them goes  
4           beyond what has been said about the company.

5           In my view the award of general and  
6           aggravated damages to Charles Leary and Vaughn  
7           Perret is insufficient to properly denounce the  
8           actions of Mr. Handshoe and serve the goal of  
9           deterrence.

10           I therefore conclude that there should be an  
11           additional \$25,000 awarded to each of Charles  
12           Leary and Vaughn Perret as punitive damages  
13           against Mr. Handshoe.

14           I'm satisfied that an injunction should  
15           issue.       The principles for granting of  
16           injunctions in defamation cases were set out in  
17           **Astley.     Barrick Gold** made it clear that  
18           injunctions are available in cases of defamation.  
19           In **Astley** Justice Chapnik said in Paragraph 21,

20

21                       "Permanent       injunctions       have  
22                       consistently   been   ordered   after

1 findings of defamation where either:  
2 (1) there is a likelihood that the  
3 defendant will continue to publish  
4 defamatory statements despite the  
5 finding that he is liable to the  
6 plaintiff for defamation; or (2)  
7 there is a real possibility that the  
8 plaintiff will not receive any  
9 compensation, given that enforcement  
10 against the defendant of any damage  
11 award may not be possible."  
12

13 Applying these factors to this case I look  
14 at the conduct of the defendant which, from the  
15 beginning, was defamatory and continued with more  
16 fervor after a retraction was printed, was  
17 published. It became stronger and more malicious  
18 and derogatory as the action was commenced and as  
19 it proceeded to this assessment of damages.  
20 There's been no retraction or apology but a  
21 continued campaign of defamation against these  
22 plaintiffs and homophobic comments about their  
23 sexual preference.

24 It is clear from the evidence before me that  
25 Mr. Handshoe will continue to publish the  
26 defamatory material. He says he's protected from  
27 foreign defamation judgments such as the default

1 judgment in this proceeding by legislation in the  
2 United States.

3 It also may be difficult if not impossible  
4 for the plaintiffs to recover on their judgment.  
5 It's not known what assets Mr. Handshoe has or  
6 whether enforcement in the U.S. on the monetary  
7 judgment will be possible.

8 I therefore conclude that an injunction  
9 should issue. Mr. Handshoe is therefore enjoined  
10 from dissemination, posting on the internet,  
11 distributing or publishing in any manner  
12 whatsoever, directly or indirectly statements or  
13 comments about Trout Point Lodge, Charles Leary  
14 and Vaughn Perret. This includes statements or  
15 comments which refer to the three plaintiffs by  
16 name, depiction or description. The mandatory  
17 injunction shall also issue requiring Douglas  
18 Handshoe to remove the defamatory comments,  
19 statements and depictions from any internet site  
20 on which he has posted them and any links to  
21 those sites.

1           The plaintiffs seek solicitor client costs  
2       of these proceedings. However they have not  
3       retained the services of counsel but have  
4       represented themselves throughout. It is true  
5       that Vaughn Perret is a law graduate and has  
6       practised law. However he has non-practising  
7       status and has never been approved to practise  
8       law in Nova Scotia. I therefore cannot conclude  
9       that solicitor client costs are warranted. That  
10      is not to say that self-represented parties are  
11      not entitled to their costs. In Nova Scotia it  
12      has been said that costs can be awarded to self-  
13      represented parties beginning with the decision  
14      in **MacBeth v. Dalhousie University** and more  
15      recently in the Court of Appeal decision in **Crewe**  
16      **v. Crewe.**

17           I've awarded the costs in the modest amount  
18      of \$4,000 to self-represented parties in **Salman**  
19      **v. Al-Sheik Ali.** In that case the self-  
20      represented parties took part in multi-party  
21      litigation and were well prepared and did not



1           cause any delays of five and one half days.

2           I conclude that in the circumstances of this  
3           case there should be a modest costs award to  
4           reflect the time spent on this matter by the  
5           individual plaintiffs. They brought the matter  
6           on to court and obtained a default judgment.  
7           They were well prepared for the one half day  
8           hearing to assess damages but it was unopposed.

9           I therefore award them costs in the total  
10          amount of \$2,000.

11          The self-represented parties of the **Salman**  
12          matter were also entitled their disbursements as  
13          are the plaintiffs in this case. They however  
14          have not provided me with their disbursements.  
15          If they wish to provide that information I will  
16          consider their out of pocket costs and render a  
17          further brief decision. I should note however  
18          that the final order in this matter therefore  
19          cannot be issued until that is done.

20          That concludes my oral decision and I guess  
21          the only question I have for the parties is do

1       you wish to make a claim for the disbursements  
2       which will mean that the order can't be issued in  
3       this proceeding until that's done.

4                MALE VOICE:       No My Lady, we would forego  
5       the out of pocket costs.

6                THE COURT:       Thank you, so the order can  
7       be issued sooner rather than later.   Thank you,  
8       that concludes the matter.

9  
10                   [END OF RECORDING 11:22 P.M.]  
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CERTIFICATE OF COURT TRANSCRIBER

I, Rita Newton, Court Transcriber, hereby certify that  
I have transcribed the foregoing and that it is a true  
and accurate transcript of an oral decision given in  
the matter of Trout Point Lodge versus Douglas  
Handshoe, taken by way of electronic recording in  
Halifax, Nova Scotia on February 1, 2012.

A handwritten signature in cursive script, reading "Rita Newton", is written over a horizontal line.

Rita Newton, Certificate No. 2006-56

CERTIFIED COURT TRANSCRIBER,  
PROVINCE OF NOVA SCOTIA

Halifax, Nova Scotia

February 20, 2012